IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

**CRIMINAL APPLICATION NO. 1140 OF 2006**

| Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders | Court's or Judge's orders |
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Mr. C.K. Pendse for the applicant.
Mr. R.V. Bansode for respondent Nos. 2 to 5.
Mrs. M.M. Deshmukh, A.P.P. for the State.

**CORAM : S.C. DHARMADHIKARI, J.**
**DATE : 17TH AUGUST, 2006**

P.C.

. Heard Mr. Pendse, the learned Advocate appearing for the applicant, Mrs. Deshmukh, A.P.P. appearing for respondent No.1 and Mr. Bansode, the learned Advocate for respondent Nos. 2 to 5.

2. The 2nd respondent is the husband of applicant, whereas respondent Nos. 3 to 5 are the in-laws. The applicant has lodged F.I.R., copy of which is annexed

at Annexure-A. The F.I.R. is lodged with J.J. Marg Police Station, Mumbai on 17th February, 2006 and the respondent Nos. 2 to 5 were arrested on 28th February, 2006.

3. Apparently, a bail application was preferred before the Metropolitan Magistrate, 17th Court, Mumbai and on 2nd March, 2006 all respondents have been enlarged on bail.

4. It is rather unfortunate that when the offences alleged are those under Sections 498-A, 406 r/w 34 of Indian Penal Code, the State has not come forward and applied for cancellation of bail granted in favour of the husband and in-laws nor has initiated any proceeding to quash and set aside the order.

5. It is left to the petitioner wife, the original complainant to approach this Court and invoke the

jurisdiction of this Court under section 482 read with relevant provisions of Code of Criminal Procedure empowering cancellation of bail. After having perused the papers and heard the counsel at length, so also going through the impugned order, I find that the said order has been passed in undue haste and without any application of mind. There is no reason assigned as to why the learned Judge did not grant any opportunity to the parties to make appropriate submissions. Be that as it may, assuming such opportunity was given to the Investigating Officer to file say and produce relevant papers, yet, it is not clear as to why the learned Judge has passed a very cryptic order and virtually assigning no reason for enlarging even the husband on bail. After the matter was argued for sometime before me, counsel for respondent Nos. 2 to 5 found it difficult to support the impugned order.

6. However, the counsel appearing for respondent Nos. 2 to 5 sought liberty of this Court to apply for bail afresh. He submits that now the charge-sheet is filed and therefore, such an opportunity be granted and instead of directing that each of the respondent be taken into custody, an opportunity be given to them to present a fresh application for bail and till that time they may not be taken into custody. More so, when Respondents 4 and 5 are ladies.

7. Hence, the following order would meet the ends of justice.

A . The order dated 2nd March, 2006 passed by the learned Metropolitan Magistrate (Page 38) is quashed and set aside.

B. However, for a period of 2 weeks from today respondents 2 to 5 shall not

be taken into custody. Within this period it would be open for them to apply to the learned Metropolitan Magistrate for bail and the learned Metropolitan Magistrate upon presentation of bail application, would give notice to the prosecution as also the original complainant and after hearing submissions shall pass a reasoned order in accordance with law. If no such application is filed during the period stipulated above, it would be open for the first respondent to take respondents 2 to 5 into custody and thereafter pursue the matter according to law.

. If Application is filed then Respondent Nos. 2 to 5 shall not be taken in custody till the same is disposed off.

C. The learned Metropolitan Magistrate to decide the application on its own merits and in accordance with law

without being influenced by the earlier order passed or any observations therein.

**( S.C. DHARMADHIKARI, J.)**